



March 20, 2000

Ms. Genevieve Stubbs
Senior Associate General Counsel
John B. Connally Building
301 Tarrow, 6th Floor
College Station, Texas 77840-7896

OR2000-1088

Dear Ms. Stubbs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133498.

The Texas A& M University (the “university”) received a request for a copy of the police report the requestor filed against the named individual, and any other public report of complaint filed against the same person. You assert that portions of the responsive documentation pertain to a sexual harassment complaint against the named individual. You claim that these documents relating to the complaint, subsequent investigation, and disciplinary proceedings are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” The common law right of privacy is incorporated into the Public Information Act by section 552.101. For information to be protected by common law privacy it must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court held that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the right of common law privacy to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to

the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* Based on *Ellen*, this office has held that a governmental body must withhold both the identities of victims and witnesses of alleged sexual harassment and any information that would tend to identify such a victim or witness. *See* Open Records Decision Nos. 393 (1983), 339 (1982).

In this instance the documents pertaining to the allegations of sexual harassment by the named individual include an adequate summary of the investigation into the allegations, the conclusions, and disciplinary proceedings taken. Thus, the release of these documents, as well as the statement of the person under investigation, will sufficiently satisfy the legitimate public interest in this matter. The rest of the responsive documents are not subject to disclosure pursuant to section 552.101 of the Government Code. We also note that the identities of witnesses to and of victims of the alleged harassment, and any information that would tend to reveal their identities are protected by the common law right of privacy and must be redacted from the information that is released. The identity of the accused is not protected, as the common law right of privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about the employee's performance. *See* Open Records Decision Nos. 438 (1986), 230 (1979), 219 (1978).

Additionally, the documents to be released also contain information that may be excepted from public disclosure by section 552.117 of the Government Code. Section 552.117(2) requires you to withhold information pertaining to a peace officer if the information relates to the home address, home telephone number, social security number, or reveals whether the peace officer has family members. We have marked the information that must be redacted prior to the documents' release pursuant to section 552.117(2) of the Government Code.

Next, we note that the submitted documents contain information pertaining to a complaint the requestor made against the named individual. These documents do not involve a complaint of sexual harassment. Therefore, these documents do not fall within the purview of *Ellen*, nor do these documents contain any information that would be excepted under common law privacy pursuant to section 552.101 of the Government Code. Consequently, we have marked the documents that must be released to the requestor in their entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Noelle C. Letteri". The signature is fluid and cursive, with the first name "Noelle" being more prominent.

Noelle C. Letteri
Assistant Attorney General
Open Records Division

ncl/nc

Ref: ID# 133498

Encl. Submitted documents

cc: Mr. Jared Ross
1075 W. Vanderbilt, #217
Stephenville, Texas 76401
(w/o enclosures)